



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32209930

Date: MAY 9, 2024

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(l), based on her derivative “T” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application) in November 2022, concluding that the Applicant was not in T nonimmigrant status at the time she filed her T adjustment application. The Applicant’s appeal was rejected by our office in July 2023 because it was untimely filed and she subsequently submitted a combined motion to reopen and reconsider the denial of her T adjustment application with the Vermont Service Center in August 2023. The Director dismissed the motion, finding that it was not submitted within the 33 days after the denial and the Applicant did not demonstrate that she merited a favorable exercise of discretion to excuse the untimely filing of the motion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An applicant who has been admitted to the United States as a T-1 nonimmigrant may adjust status to that of a lawful permanent resident at the discretion of U.S. Citizenship and Immigration Services (USCIS) if, among other requirements, he or she has been physically present in the United States for a continuous period of at least three years since the date of admission as a T nonimmigrant (or alternatively, has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less); continues to hold such status at the time of filing the T adjustment application; and has been a person of good moral character. Section 245(l)(1) of the Act; 8 C.F.R. § 245.23(a).

II. ANALYSIS

In November 2018, USCIS granted the Applicant derivative T nonimmigrant status, which was valid until August 30, 2020, and she was admitted into the United States on August 27, 2020. The Applicant filed her T adjustment application in October 2020. The Director denied the T adjustment application in November 2022 because the Applicant was not in T nonimmigrant status at the time she filed her T adjustment application, as 8 C.F.R. § 245.23(a)(2)(ii) requires. The Applicant submitted an appeal in March 2023 which was rejected because it was not filed within 93 days, the extended timeframe due to the Covid 19 pandemic. She then filed a combined motion to reopen and reconsider the denial of her T adjustment application with the Vermont Service Center. The motion was dismissed in December 2023 because it was not submitted within 33 days after the November 2022 denial of her T adjustment application and the Applicant did not demonstrate that she merited a favorable exercise of discretion to excuse the untimely filing of the motion.

With the instant appeal, the Applicant requests that we reconsider her initial appeal and asserts the following: although her T petition approval expired August 30, 2020, her visa expiration date was January 9, 2021; she filed her T adjustment application on August 28, 2020, and was unaware she needed to file a Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539), to extend her T nonimmigrant status; and when she filed her T adjustment application, she received an automatic extension of her T nonimmigrant status as stated on her receipt notice. Regarding the previous appeal submitted to our office, the Applicant contends that she mailed the appeal to the Vermont Service Center with a Form I-912, Request for Fee Waiver (Form I-912), on January 30, 2023; the Form I-912 was received on February 6, 2023; the appeal was not accepted because additional action was required; and the next day a revised appeal was mailed to the Vermont Service Center. The Applicant argues that though the revised appeal with supporting documents was not received until March 2023, she submitted the initial appeal in February 2023 and the mail timeframe is beyond her control.

The issue before us is whether the Director correctly dismissed the Applicant's motion to reopen and reconsider the denial of her T adjustment application. Here, the record supports the Director's determination that the Applicant's motion was untimely filed and she did not demonstrate that she merited a favorable exercise of discretion to excuse the untimely filing of the motion. A review of the record reflects that the Applicant submitted her motion in August 2023, more than the allowed 33 days after the November 2022 denial of her T adjustment application.¹

¹ On appeal, the Applicant argues that the Director erred in finding she was ineligible for adjustment of status at the time of filing her T adjustment application and contends she received an automatic extension of her T nonimmigrant status upon filing her T adjustment application. However, the receipt notice states that “[i]f your [T nonimmigrant] status was no longer valid by the date your [T adjustment application] was received, you will need to file the [Form I-539] with this office to request an extension of your nonimmigrant status.” Though the record does not indicate that the Applicant was in T nonimmigrant status at the time she filed her T adjustment application, this decision is without prejudice to the filing of a new T adjustment application after the approval of an extension should the Applicant file a Form I-539, Application to Extend/Change Nonimmigrant Status. See USCIS Policy Memorandum USCIS PM-602-0032.2, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* 4, 9 (Oct. 4, 2016), <https://www.uscis.gov/legal-resources/policy-memoranda>.

The Applicant is seeking adjustment of status as a T nonimmigrant under section 245(l) of the Act, which has no exception to the filing requirements. The implementing regulations require an applicant to establish that they were lawfully admitted to the United States as a T nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.23(a)(2)(ii). The statutory and regulatory requirement that a T adjustment applicant be in T nonimmigrant status at the time of filing is a substantive eligibility requirement that we may not disregard. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

ORDER: The appeal is dismissed.